

PUBLIC DEFENDER NEWS

CHIEF'S CORNER

Respect. In an article posted on the National Association for Public Defense website in February, public defender Andre Vitale wrote that respect “must be a part of how we treat every person we represent.” Vitale’s essay came to mind recently as I read about the utter lack of respect shown by a Maryland judge to a *pro se* litigant.

Delvon King was representing himself on gun charges in state court. In recognizing the right of self-representation, the Supreme Court stated that “[t]he public conscience must be satisfied that fairness dominates the administration of justice.” Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942). The Court later noted that “[t]he right to appear *pro se* exists to affirm the dignity and autonomy of the accused[.]” A court may terminate self-representation if a defendant “deliberately engages in serious and obstructionist misconduct.” Faretta v. California, 422 US 806, 834 n. 46 (1975). None of these constitutional precepts were honored by the court in Mr. King’s case.

At the start of jury selection, but before any potential jurors were in the courtroom, Mr. King, who apparently considers himself a sovereign citizen, challenged the court’s jurisdiction. According to a transcript published in the *Baltimore Post-Examiner*, Mr. King was trying to argue a legal point when Circuit Court Judge Nalley cut him off. King persisted. He did not threaten the judge, nor did it appear King made any attempt to flee the courtroom. He simply continued in his argument that the law did not apply to him. Judge Nalley ordered a deputy sheriff to activate an electronic Stun-Cuff that King was wearing on his ankle. Mr. King screamed and collapsed on the floor. Jury selection resumed after King was examined by a medical worker at the courthouse.

Judge Nalley’s conduct obviously was extreme. The state court of appeals subsequently ordered him removed from the bench. His lack of respect for the judicial



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SPECIAL POINTS OF INTEREST

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process and the dignity of persons appearing before him will likely not be demonstrated by the judges before whom we appear. Still, this callous disregard of the fundamental dignity of a human being took me back to the premise of Andre Vitale's essay: as public defenders, we have an opportunity – and an obligation – to demand that our clients are treated with respect. And the first step starts with us. Vitale writes, "[n]o one, not a [prosecutor], not a Judge, not a member of the Jury, will see the person we represent as anything other than a criminal defendant, unless we as their advocate show that we respect that person as a human being. There are many things we should do to humanize the person we represent. But the most basic; the easiest thing we can do; the one thing we should be doing in every case, at every court appearance, during every trial is refer to that person by his or her name."

We have a right to demand respect. By our actions, we can bring about the same for the people we serve.

Bill

SUBSTITUTION RULE

Bill Hooks

The Montana Supreme Court granted the State Bar's motion to postpone a ruling on a petition by district court judges to substantially amend the rule which permits peremptory substitution. The Court has deferred action until November.

A working group has been formed to attempt to resolve the matter. On August 19, Public Defender Commission Chairman Fritz

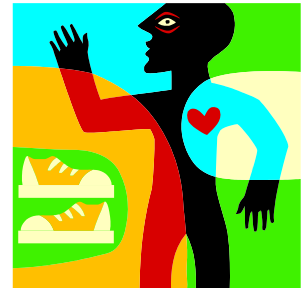


Gillespie and I attended a meeting of the working group. In addition to OPD, the group is comprised of district court judges and representatives of Montana Legal Services Association, Montana Defense Trial Lawyers Association, Montana Association of Criminal Defense Attorneys, Montana Trial Lawyers Association, Attorney General's Office, and the State Bar. Further meetings will be scheduled.

Respect "must
be a part of
how we treat
every person
we represent."

ANNUAL CHANGE IS HERE!

There are several changes to our healthcare benefits this year, including higher premiums in 2015. The



good news is that the [Live Life Well Incentive](#) can save you up to \$30 per month, or a maximum of \$60 per month if you have a spouse, domestic partner or dependent over 18 also completing the required activities. All requirements for the incentive must be complete by October 31.

Other changes include naturopathic and acupuncture benefits, and a \$500 medical flex rollover.

You must complete your benefits election online by October 22. Plan to attend a [local presentation or webinar](#) to learn more about how the plan changes will affect you and your family.

APPELLATE NEWS

Who Gets to Decide Whether to Defend with Mental Disease or Defect – The Attorney or The Defendant?



Wade Zolynski,
Chief Appellate Defender

As lawyers, we know the accused's objectives must control despite counsel's wishes in a few key areas. For example, only the accused can decide whether to testify, plead guilty, or proceed to trial. Other areas are less clear. Must a defendant's wish to forego a mental illness

related defense control? Many states have decided it does and that counsel's wishes must give way. Indeed, "[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails" and "the Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." *Faretta v. California*, 422 U.S. 806, 819-820 (1975).

Montana has not yet decided, but it may soon.

Nearly every appellate court to have addressed the question has held that the fundamental decisions over which a defendant has ultimate authority include the decision whether to assert a defense or plea based on mental illness. In *Cooke v. Delaware*, 977 A.2d 803, 841-842, the Delaware Supreme Court held that counsel's strategy to pursue a "guilty but mentally ill" verdict over Cooke's objections "deprived Cooke of his constitutional right to make the fundamental decisions regarding his case." The Kentucky Supreme Court, in *Jacobs v. Kentucky*, 870 S.W.2d 412, 417-18 (Sup. Ct. Kentucky 1994), made a similar ruling and held "Jacobs's Sixth Amendment right to present his defense of innocence was undermined by counsel's presentation of an insanity defense" over defendant's objection. Closer to home, the Washington Supreme Court, in *Washington v. Jones*, 99 Wash.2d 735, 740-42, 664 P.2d 1216, 1219-1220 (Sup. Ct. Wash. 1983), determined a defendant's constitutional right to control the defense and choose a plea includes whether to forgo a plea of

not guilty by reason of insanity. See also *Frendak v. United States*, 408 A.2d 364 (D.C. Ct. App. 1979); *Treece v. Maryland*, 313 Md. 665, 547 A.2d 1054, (Ct. App. Maryland 1988); *Massachusetts v. Federici*, 427 Mass. 740, 696 N.E.2d 111 (Sup. Jud. Ct. Mass. 1998); *Johnson v. Nevada*, 117 Nev. 153, 17 P.3d 1008 (Sup. Ct. Nev. 2001); *Edwards v. Florida*, 88 Sp.3d 386 (D.Ct. App. Fl., 5th Dist. 2012); *Oregon v. Peterson*, 70 Or.App. 333, 689 P.2d 985 (Ct. App. Oregon 1984);

Montana has not yet decided, but it may soon.

At least one state, however, has ruled the decision whether to present an insanity defense is a matter of trial strategy for counsel to decide. *Illinois v. Anderson*, 266 Ill.App.3d 947, 641 N.E.2d 591, 204 Ill.Dec. 367 (App. Ct. Ill., 1st Dist., Fifth Div. 1994).

In Montana, a defendant's right to decide whether to assert a mental illness defense seems to find support in Montana's unique constitutional rights to individual dignity and privacy. See Mont. Const. Art. II, Section 4 ("The dignity of the human being is inviolable."); Mont. Const. Art. II, Section 10 ("The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.") See also Matthew O. Clifford & Thomas Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity" Clause with Possible Applications*, 61 Mont. L. Rev. 301, 308 (Summer 2000); *Walker*, ¶ 82 ("The plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated.")

Moreover, the rules of professional conduct instruct "a lawyer shall abide by a client's decisions concerning the objectives of representation . . ." Mont. R. Prof. Cond. 1.2(a).

So who gets to decide? Montana's Supreme Court will be given an opportunity to weigh-in on the issue soon as a pending case presents just this dilemma.

If you have any questions regarding this or any other issue, contact the Office of the Appellate Defender at 406-444-9505. May the force be with you.

AND THE AWARD GOES TO . . .



Congratulations to Traci Brasier, recipient of the July Support Staff of the Month Award. Traci was recognized because of her “helpful attitude, fabulous documentation, her ability to perform with grace

under pressure and her extraordinary patience with all of OPD—managers, staff and contractors.”

The August award went to Eva Curnow. Eva was honored for her “ability to do things quickly and accurately” and because she “is the type of person that makes OPD run ... managing myriad tasks with a bright smile and a WOW! attitude. ”

In September, Marilyn Pulver was honored for “going above and beyond at the drop of a hat.” Her great attitude makes every interaction with her a pleasure.

Thank you all for your nominations! Please continue to recognize your support staff and [submit](#) your October nominations by October 20.

KUDOS!

Bill Hooks



Not all victories in criminal cases can be defined solely by the verdict. Positive outcomes can be found in appropriate negotiated

dispositions, plea deals, and sentences.

Still, OPD staff, attorneys and investigators have chalked up a number of hard-earned verdicts recently. In Region 4, Chris Abbott and Nick Hyde got a “not guilty” verdict on a charge of possession of dangerous drugs; Mark Epperson obtained an acquittal on a felony intimidation charge following a bench trial in Region 10; Jennifer Streano of MCU and Mori Woods obtained a lesser offense verdict, and avoided a conviction on a homicide charge; Mark Dunn (trying his first jury trial) and Liam Gallagher hung a jury in Region 3; a jury returned a “not guilty” verdict on a charge of assault with a weapon for Eddie Werner’s client in Region 9; and, Sheryl Wambsgans, Bridget Carneal and Annie DeWolf have obtained acquittals in Region 8.

Well done!

“Each time a man stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope.”

—Robert Kennedy, courtesy of former MCU admin Alta Solan

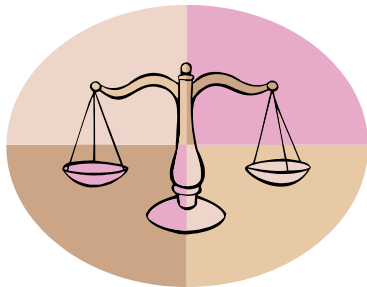
SELF-HELP RESOURCES

People often come to us with problems that are outside of OPD's mission—landlord/tenant issues, obtaining public benefits, and so on. While we may not be able to provide legal representation, we can direct them to other resources.

The State Bar has an excellent list of [Legal Resources](#) and Frequently Asked Questions on their new website, including a [Montana Citizen's Guide to the Courts](#), which includes a list of legal resources in the appendices.

[MontanaLawHelp.org](#) is another resource for information and forms for civil legal issues. Their website also includes a list of [legal clinics](#) and a legal aid [directory](#).

The Supreme Court's [Court Help Program](#) also provides self-help assistance for civil matters. County resource guides with topics from addiction services to the local VFW post are also available on this page (choose your county on the map and scroll down to Community Resources).



Keep your eye out for local community resource directories, too. Career Futures has directories for [Region 5 counties](#) on their website and in hard copy

throughout Butte. People will be grateful for any direction we can give them, even if we can't offer them legal services.



The arrow **affected** the aardvark.



The **effect** was eye-popping.

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Montana State Employees CHARITABLE GIVING CAMPAIGN September 29 to November 7

In 2014 the State Employees Charitable Giving Campaign theme is "**Green in '14**" as we continue to go paperless and cut more than \$5,000 of campaign overhead costs by not printing a giving guide.

Total giving through the end of the '13 campaign year was more than **\$445,000** -- which put the total given by Montana state employees since the first campaign in 1991 to nearly **\$7 million**.

That generous giving has made a big difference to nonprofit organizations and your fellow Montanans.

Thanks state employees!

Give online before November 7 at secgc.mt.gov



While you're not expected to wash the state car *every* time you use it (although once in a while would be nice!), you do have certain **every time** responsibilities as a user—namely to make it clean and safe for the next person.

Be sure to:

- Remove trash and wipe up spills
- See that the exterior (especially windows and headlights) is clean enough for safe driving
- Report any needed maintenance or repairs
- Leave at least a half tank of gas for the next trip

Your co-workers will thank you!

Grammar Girl has more on *Affect* vs. *Effect* (and other grammar conundrums) at <http://www.quickanddirtytips.com/education/grammar/affect-versus-effect>

TRAINING, TRAINING AND MORE TRAINING!

Peter Ohman

Annual Investigator Conference

On August 21 and 22 the OPD investigators gathered in Livingston for their annual conference. Topics covered included presentations on toxicology, investigation of crimes involving young complainants, and cellular devices with an emphasis on cell tower information and forensics. Speakers came from Helena, Missoula and North Carolina. There was also a “bring your own case” session which gave attendees an opportunity to brainstorm on some challenging



Lissa Power, Investigator of the Year

investigations from the regions. Unfortunately, Eric Severson's barbecue was rained out but, as always, the OPD investigators managed to find a way to entertain themselves, albeit in the cool, late summer weather of Southwest Montana. Congratulations are also in order for Lissa Power from Region 11 (Miles City), who received the award for Investigator of the Year. Thanks to all those who attended and looking forward to next year.

8th Annual Boot Camp

While some feel like they've already been with OPD for an eternity and others are still waiting for their bar results, a new cadre of OPD lawyers gathered at the Lubrecht Forestry Center outside of Bonner for the 8th Annual Boot Camp. Over the course of three days both full-time and contract attorneys were exposed to a variety of presentations focused on building trial skills. Aside from an introduction to the Chapter method of cross-examination the participants worked on their voir dire skills, with a mock panel who patiently and attentively sat through the entire day on Wednesday. Lawyers brought their own cases for the voir dire exercise, so hopefully they will have learned what to do and not to do when they try the matters for real. Much thanks to those who took time out of their busy schedules to help with the training, including but not limited to: Dave Merchant from the Federal Defenders, Bill Hooks, Annie DeWolf, Wade Zolynski, Noel Larrivee, Brigitte Menard, and Jennifer Streano.



*See you at the
Annual Meeting,
October 8-9 in
Missoula!*

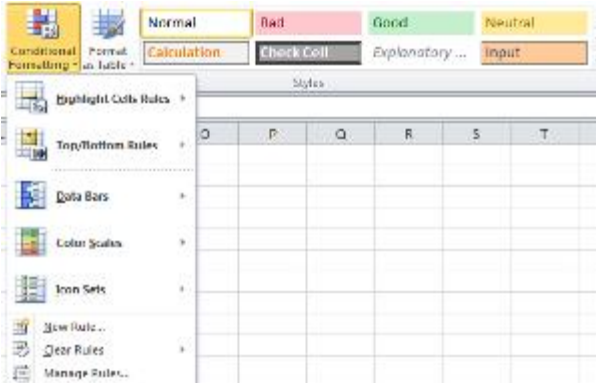
TIPS AND TRICKS

EXCEL TIPS

Brenda Ingersoll, Accountant

Conditional Formatting

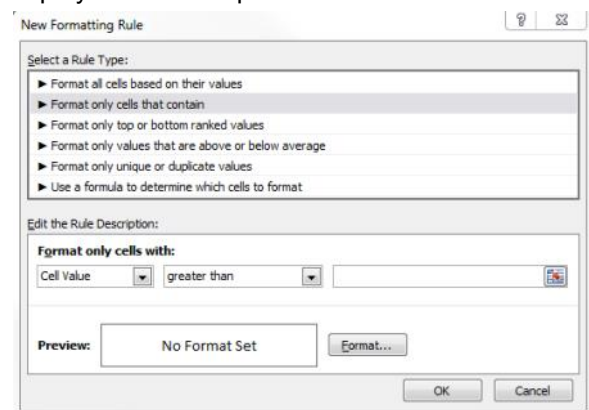
Conditional Formats respond to the contents of cells. They are almost always applied to group of cells, often rows or columns of totals, if not entire tables. Click **Home Tab**, locate the **Style** group and click on the downward arrow of **Conditional Formatting**.



When you click on **Highlight Cell Rules** this method will keep the cells “inactive” until the values (numeric or text) contain the specific rule you select. You have the option to select: **Greater Than, Less Than Between, Equal To, Text that Contains, A Date Occurring, and Duplicate Values**. Once you have selected a rule a dialog box will appear where you may specify the appropriate criteria.



Note: Within the dialog box the dropdown arrow will display numerous options of how the information will appear.

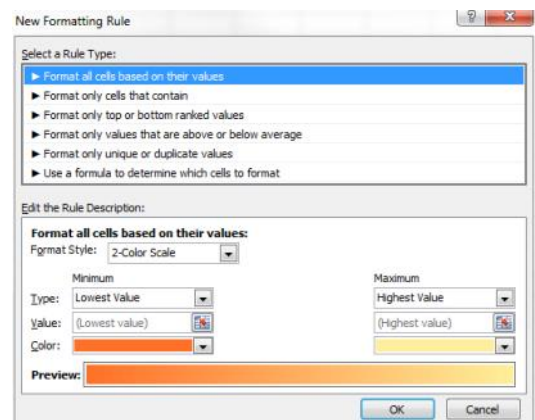


In addition to **Highlighting Cell Rules** there are four other options:

1. **Top Bottom:** Selected formatting applied to all cells in a range that are greater than or less than a given threshold. Click **Top 10 Items, Top 10%, Bottom 10 Items, Bottom 10%, Above Average,** or **Below Average** to display a dialog box where you can specify the appropriate criteria.
2. **Data Bars:** Gradient fills of color within cells whose lengths indicate the values in the cells relative to all other adjacent cells formatted using the same conditions. Choose from a number of different colors, based on the current theme. Excel will automatically allow you to preview the proposed changes before actually clicking on the changes.
3. **Color Scales:** Two-color or three-color formats whose color indicates the values in the cells relative to all other adjacent cells formatted using the same conditions. Choose from a number of different color combinations, based on the current theme.
4. **Icon Sets:** Sets of three, four, or five tiny graphic images placed inside cells whose shape or color indicates the values in the cells relative to all other adjacent cells formatted using the same conditions. Choose from a number of different types of icons.

Note: Before selecting **Conditional Formatting**, make sure the cells to be formatted have been selected. There are a few more options with how to format data. We can go again to the **Conditional Formatting** box in the **Styles** group. From there select **New Rule**. This will open a dialogue box where we are able to format how we want the formatting to appear. You can select color options, the maximum and minimum value and the format style.

Tip: After adding rules they can easily be removed. Return to the **Conditional Formatting** box in the **Styles** group. Click on the downward arrow and select **Clear Rules from Selected Cells**.





An ALS Ice Bucket Challenge was held 8/22/14 at the Hamilton OPD office. A very dapper (notice the tie) Tom Schoenleben was drenched by Jona Lagerstrom and Ben Williams. Rumor has it none of those challenged has followed suit.

Managing Stress

The first step to managing stress is to learn to recognize your body's response to it. Not everyone reacts the same. Signs can include anxiety, fatigue, anger, headaches and backaches, upset stomach, sleep problems, and memory and concentration problems.

The next step is to choose a healthy way to deal with your stress. In some cases, you may be able to avoid stress, but this often isn't possible. It may be more practical to change the way you react to it.

Experts have these suggestions:

- Build strong relationships with people who can provide emotional and other support. Reach out to them when you're having a tough time.
- Don't worry about things you can't control, like the weather or someone else's behavior.
- Avoid dwelling on problems.
- Set realistic goals at work and home. Avoid overscheduling yourself.
- Set priorities. Decide what must get done and what can wait, and learn to say no to new tasks if they'll overwhelm you. Eliminate tasks that aren't essential.
- Solve the little problems. It can help give you a sense of control.

- Make time for enjoyable and relaxing activities in your life each day. Participate in something you don't find stressful, like hobbies or social events. Get a massage or take a warm bath.
- Eat regular, well-balanced meals and get enough sleep.
- Exercise regularly. It helps to relieve pent-up tension and release mood-improving chemicals in your brain.
- Meditate. Research shows that activities like yoga and relaxation exercises not only help reduce stress, but they also boost immune functioning.
- Do some deep breathing. This helps you get plenty of oxygen and activates the relaxation response, the body's antidote to stress.

If you continue to feel overwhelmed by stress, talk to your health care provider or a mental health professional. He or she can help you learn to manage stress effectively.

Remember, reducing stress in your life won't just make you feel better in the short term. It may protect your health and quality of life in the long term, too.

Excerpted from an Independent Record column by Melanie Reynolds, Lewis and Clark County health officer.